

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

vs.

WILLIAM KELLY PENN,

Defendant.

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Criminal Nos. 08-224/18-125/21-174

**HEARING ON – Videoconference SR Violations (08-224)/  
Sentencing (18-125)/COP & Sentencing (21-174)  
Before Judge Nora Barry Fischer**

Benjamin Risacher, AUSA  
Appear for U.S.A.

Andrew Lipson, AFPD  
Appear for Defendant

Nick Capaccio  
Angelica Banta  
Appear for Probation Office

Hearing begun 4/29/2021 at 9:12 a.m.

Hearing adjourned to \_\_\_\_\_

Hearing concluded 4/29/2021 at 12:55 p.m.

Stenographer: D. Rowe  
Clerk: B. Kravetz

**WITNESSES:**

For U.S.A.

For Defendant

Defense counsel meets with Defendant in private breakout session; Oath administered to defendant; Court confirms with Defendant that he consents to appear by video conference; Court finds that hearing cannot be further delayed without serious harm to the interests of justice; Court finds Defendant knowingly and voluntarily waived right to appear in person and consents to use of video conference; Court finds Defendant competent to proceed in all three matters, Crim. Nos. 08-224, 18-125 and 21-174.

As to the Indictment at Crim. No. 21-174, Court asks defendant questions from colloquy and defendant indicates understanding; Court details charges; Court advises defendant of trial rights; Defendant indicates understanding of charges and trial rights; Court advises defendant regarding Sentencing Guidelines application & pertinent Supreme Court & Circuit Court decisions; Court advises defendant of potential penalties; Court accepts Defendant's waiver of presentence investigation report; Court makes findings as to advisory guidelines to which no objections are lodged by the parties; Government details elements of the offenses and summarizes evidence against the defendant; Defendant accepts Government's evidence; Defendant indicates wish to plead guilty; Court accepts Defendant's plea and enters a Judgment of Guilt as to Count 1; Defendant authorizes counsel to sign change of plea form on his behalf and executed form forwarded to law clerk to be made part of the record.

As to SR violations at Crim. No. 08-224, Court details background of case and allegations in Petition; Defendant admits violations; Court finds defendant committed each of the violations indicated in the Petition; Parties decline to present evidence given admissions; Court makes factual findings regarding evidence on the record and as to sentencing guidelines and statutory penalties; no objections lodged to Court's findings.

As to Crim. No. 18-125, Court details background of case; Court asks defendant questions re: Presentence Report, Addendum, Second Addendum, Tentative Findings, Supplemental Tentative Findings, and Amended Presentence Report, defendant answers & understands; Court remarks on Guidelines and pertinent Supreme Court & Circuit Court decisions; Court notes that parties have no further objections to Amended Presentence Report; Court adopts the Amended Presentence Report, Addendum, and Second Addendum, except as otherwise set forth in the Court's Supplemental Tentative Findings & Rulings; Court adopts its Supplemental Tentative Findings & Rulings as its Initial Findings and Rulings.

With respect to the sentencing portion of the hearing as to all three cases, Crim. Nos. 08-224, 18-125 & 21-174, the parties decline to present witnesses; Court admits additional documentary exhibit from the defense; Court makes factual findings regarding evidence presented; Court hears argument from counsel on Defendant's motion for variance and request for partial concurrence of sentences and other aspects of sentence; Defendant makes a statement to the Court; Defendant has confidential breakout session with counsel; Court denies Defendant's motion for variance and request for concurrent sentences, for reasons fully stated on the record.

Sentence imposed: time served incarceration for the supervised release violations at Count 1 of the Indictment at Crim. No. 08-224; 46 months at Count 1 of the Indictment at Crim. No. 18-125; and 6 months at Count 1 of the Indictment at Crim. No. 21-174; said terms of imprisonment shall run consecutively. The Court credits time served in presentence custody from the date of arrest until 4/29/21 to the sentence at Crim. No. 08-224. Additional recommendations set forth in the Judgments. Total term of six (6) years' supervised release; consisting of six (6) years at Crim. No. 18-125 and one (1) year at Crim. No. 21-174; said terms of supervised release shall run concurrently; Fine waived; \$125.00 Special Assessment (\$100 at Crim. No. 18-125 & \$25 at Crim. No. 21-174), due immediately; Court states its reasons for imposition of Sentence; Court advises Defendant of appeal rights;

Defendant remanded to custody of USMS. The parties did not request a copy of the transcript and it was not ordered at this time.

Exhibit List follows.